

Municipal Services Agency
Paul Hahn
Agency Administrator



County Executive
Terry Schutten

County of Sacramento

October 22, 2008

Bay-Delta Conservation Plan - Habitat Restoration Program Technical Team
Ms. Karen Scarborough, Undersecretary
Mr. John Cain, Co-Chair, BDCP Habitat Restoration Program Technical Team
Mr. Dave Harlow, Co-Chair, BDCP Habitat Restoration Program Technical Team
c/o Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, California 95814

Re: Comments of the County of Sacramento on the Second Draft of BDCP's Habitat Restoration Conservation Measures (October 17, 2008)

Dear Ms. Scarborough, Mr. Cain and Mr. Harlow:

The County of Sacramento thanks you for the opportunity to submit the following comments on the October 17, 2008 draft of the Habitat Restoration Conservation (HRC) Measures. The County appreciates the diligent efforts of the Habitat Restoration Program Technical Team in preparing the HRC Measures. As a preliminary matter, however, the County of Sacramento notes that the amount of time provided to review and comment on the HRC Measures – five days – is not adequate to provide complete comments. The County therefore may need to supplement its comments at a later time when it has had an opportunity to review and evaluate the conservation measures more thoroughly.

1. Floodplain Habitat Conservation Measures

- A. Conservation Measure FLOO1.1: Modify Fremont Weir and the Yolo Bypass to provide for higher frequency and duration of inundation.
- B. Conservation Measure FLOO2.1: Create and operate a new flood bypass in the Yolo Bypass/Cache Slough Complex ROA to restore seasonally inundated floodplain habitat.

Both FLOO1.1 and FLOO2.1 contemplate diverting flood flows from the Sacramento River into the existing Yolo Bypass or the proposed Yolo Bypass/Cache Slough Complex Restoration Opportunity Area at a higher frequency and duration of inundation. These conservation measures acknowledge that increasing the frequency and duration of inundation in the Yolo Bypass will decrease the amount of water in the main stem of the Sacramento River (October 17, 2008 draft of the Habitat Restoration Conservation HRC Measures, p. 8; see also p. 51). However, neither of these proposed conservation measures addresses whether the Sacramento River contains sufficient flows to accommodate the higher frequency and duration of inundation or whether such measures will adversely affect existing water rights on the Sacramento River. Sacramento has a significant interest in maintaining the viability of its permitted diversions on the Sacramento River, including

its right to divert water during high flow periods. The HRC Measures should make clear that any diversions to the Yolo Bypass or the proposed Yolo Bypass/Cache Slough Complex associated with FLOO1.1 or FLOO2.1 will not adversely affect pre-existing water rights on the Sacramento River.

FLOO1.1 acknowledges that it may create “reduced flows within the main stem river during the late winter and early spring (i.e., when the bypass would be flooding) which have the potential to reduce survival of those organisms that continue to inhabit the main stem river.” (*Id.* at p. 8.) In other words, because flows will be diverted out of the Sacramento River into the Yolo Bypass, species that depend on such flows in the main stem of the Sacramento River may be adversely affected. Even greater flows will be diverted to flood plains if FLOO2.1 is also adopted and implemented. (*Id.* at 14.) If species in the main stem are being adversely affected by the activities associated with FLOO1.1 and FLOO2.1, this may impact the County's ability to divert water under its water rights permits due to the additional impacts on the species. Operations pursuant to FLOO1.1 and FLOO 2.1 must respect the County's existing water rights and their priority. Sacramento also has a significant interest in preserving flows in the Sacramento River for aesthetic, biological and recreational uses. Even if the frequency and duration of inundation in the Yolo Bypass and the proposed Yolo Bypass/Cache Slough Complex are increased, the value of those habitat restoration activities must be balanced against the harm that will result to existing habitat in the main stem of the Sacramento River. The aesthetic, biological, and recreational aspects of the main stem of the Sacramento River must be recognized and protected.

Finally, health and safety aspects must also be considered. Constructing levees to increase the frequency and duration of inundation in the Yolo Bypass has the potential to place added stress on other levees in the Sacramento River levee system. FLOO1.1 and FLOO2.1 do not presently account for the possibility that this added pressure or risk may place on the existing levee system.

2. Freshwater Intertidal March Habitat Restoration Conservation Measures

- A. Conservation Measure FIMA1.2: Restore a mosaic of _ to _ acres of freshwater intertidal marsh, shallow subtidal aquatic, and transitional habitat within the Cosumnes/Mokelumne ROA.
- B. Conservation Measure FIMA1.3: Restore a mosaic of _ to _ acres of intertidal marsh and shallow subtidal aquatic habitat within the West Delta Restoration Opportunity Area

FIMA1.2 and FIMA1.3 contemplate the conversion of designated tracts and islands, including tracts and islands within Sacramento County, to intertidal marshes. This will involve acquiring land, creating tidal channels, and breaching levees to create a tidal influence on the tracts and islands. (*Id.* at 30, 33-34.) These conservation measures will also involve the determination of new land uses for and management of the affected tracts and islands. (*Id.* at 32, 35.) These new uses will significantly alter the existing land uses on these tracts and islands within Sacramento. Because Sacramento is the local land use planning agency and it will be significantly affected by the land use changes proposed in FIMA1.2 and FIMA1.3, the BDCP

implementing agency should be required to consult and coordinate with Sacramento County regarding the implementation of FIMA1.2 and FIMA1.3 or any other conservation measures that will significantly alter land use patterns within Sacramento County.

3. Channel Margin Habitat Restoration Conservation Measures

- A. Conservation HRC Measures CHMA1.1: Support development and implementation of levee construction and maintenance designs that incorporate aquatic, intertidal marsh, and riparian habitat features.
- B. Conservation HRC Measures CHMA1.2: Provide for the establishment of native riparian woody vegetation and emergent vegetation on BDCP constructed levees.

CHMA1.1 contemplates the "construction of new levees, or maintenance of existing levees, located along important habitat areas for covered fish species." (*Id.* at 47.) CHMA1.2 also contemplates the construction new levees. (*Id.* at 48.) However, CHMA 1.1 does not identify which levees will be affected and which channels are considered to be "important habitat areas." CHMA1.2 does not identify where the proposed new levees will be constructed. As noted above, the construction of new levees invokes public health and safety concerns because constructing stronger levees in certain reaches may make existing levees in other reaches more vulnerable to failure and flooding.

Without more detailed information on which channels CHMA1.1 is addressing and where the new levees of CHMA1.1 and CHMA1.2 will be constructed, the County of Sacramento is unable to adequately evaluate the effects of CHMA1.1 and CHMA1.2. To the extent that levees or channels within Sacramento County will be affected by CHMA1.1 and CHMA1.2, the County should be consulted before the implementation of such measures.

4. Riparian Habitat Restoration Conservation Measures

- A. Conservation Measures RIPA1.1: Restore between _ and _ acres of riparian forest and scrub communities as a component of restored floodplain, freshwater intertidal marsh, and channel margin habitats.

This conservation measure contemplates the establishment of riparian habitat along existing drains and channels. One of the rationales for this measure is to attempt to create habitat for terrestrial invertebrates and other identified species. (*Id.* at 52-53.) The County of Sacramento is concerned that BDCP's efforts such as RIPA1.1 have the potential to overlap and conflict with the County's current efforts to develop the South Sacramento Habitation Conservation Plan.

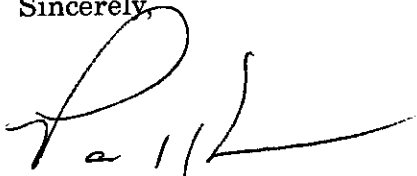
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The County of Sacramento believes that the efforts of the Habitat Restoration Program Technical Team are laudable and appreciates this opportunity to comment on the HRC Measures. Sacramento looks forward being involved in the BDCP process as it evolves.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul J. Hahn", with a long horizontal flourish extending to the right.

Paul J. Hahn
Agency Administrator

cc: Terry Schutten, County Executive
Robert Ryan, County Counsel
Keith DeVore
Robert Sherry
Leslie McFadden
Stuart Somach & Jennifer Buckman

JTB/PJH/ds